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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 17, 1998

Via HAND DELIVERY

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554


Re: **Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111**

Dear Ms. Salas:

Enclosed for filing are an original and four copies of the Comments of Motorola, Inc. and Iridium Operating LLC to Petition for Clarification and Reconsideration of ICO Global Communications in the above-referenced proceeding. Please date stamp and return the extra copy of this submission that is enclosed.

Please do not hesitate to contact us if you have any questions.

Sincerely,



Maury D. Shenk

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEB 17 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

**Amendment of the Commission's
Regulatory Policies to Allow Non-U.S.-
Licensed Space Stations to Provide
Domestic and International Satellite
Service in the United States**

IB Docket No. 96-111

**COMMENTS OF MOTOROLA, INC. AND IRIDIUM OPERATING LLC
TO PETITION FOR CLARIFICATION AND RECONSIDERATION
OF ICO GLOBAL COMMUNICATIONS**

Motorola, Inc. ("Motorola") and Iridium Operating LLC ("Iridium") hereby submit their comments on the Petition for Clarification and Reconsideration of ICO Global Communications (the "ICO Petition") regarding the Commission's DISCO-II Order,¹ pursuant to 47 C.F.R. § 1.429.²

In the DISCO-II Order, the Commission implemented the market-opening principles of the World Trade Organization ("WTO") Basic Telecommunications

¹ Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111, FCC 97-399 (rel. Nov. 26, 1997) ("DISCO-II Order").

² See also 63 Fed. Reg. 4640 (Jan. 30, 1998).

Agreement. Motorola and Iridium applaud the actions of the Commission in the DISCO-II Order and urge it to continue on the procompetitive course it has charted.

I. LICENSING RULES

The ICO Petition first argues that foreign satellite applicants should not be required to provide the same technical, financial and legal information that U.S. applicants must provide under the Commission's Rules.³ ICO proposes that the Commission instead adopt a presumption that foreign-licensed satellite systems are qualified to serve the U.S. market, unless there is "clear evidence that an applicant's system was licensed under a licensing or authorization process that did not require a demonstration of technical, financial or legal capabilities."⁴ ICO contends that its proposed approach will reduce the likelihood that U.S. satellite systems will face burdensome licensing requirements in other countries.⁵

ICO is correct that multiple licensing requirements for satellite systems can place significant burdens on global satellite operators like ICO and Iridium. The Commission should seek to minimize such burdens. At the same time, it is important to ensure that the Commission has adequate information to consider satellite applications from both U.S. and foreign applicants and that the Commission treat all applicants in an even-handed manner (as it is required to do under the WTO Basic Telecommunications

³ ICO Petition at 2-4.

⁴ Id. at 3-4.

⁵ Id. at 4.

Agreement). Accordingly, the Commission should maintain the balanced approach adopted in the DISCO-II Order – i.e., requiring foreign satellite applicants to provide the same information provided by U.S. applicants, with certain limited exceptions where such information is not necessary⁶ and subject to appropriate waivers in the public interest.⁷

Motorola and Iridium also urge the Commission to give favorable consideration to any appropriate request for waiver of information-submission requirements. However, the Commission should not adopt the alternative presumption proposed by ICO – not because of any reason to suspect the qualifications of ICO or the rigor of the United Kingdom's licensing process⁸ – but because such an approach would present significant problems if applied generally. **First**, the Commission would have reduced access to the information that it needs to make efficient and fair licensing decisions. **Second**, the proposed approach could delay licensing proceedings by requiring the Commission to examine the sufficiency of foreign licensing practices. **Third**, the Commission would often be able to obtain needed information only upon a

⁶ The Commission decided that no financial information will be required where foreign satellites are already in orbit, and no technical information will be required where ITU coordination of the foreign satellites is completed. See DISCO-II Order at ¶ 191.

⁷ See id. at ¶ 173 (“We will consider requests for waivers of any rules, by foreign or domestic providers, on a case-by-case basis.”). This is the approach advocated by Motorola and Iridium in their comments in this proceeding. See Further Comments of Motorola Satellite Communications, Inc. and Iridium LLC, at 7 (Aug. 21, 1997) (“Motorola/Iridium Further Comments”); Reply Comments of Motorola Satellite Communications, Inc. and Iridium LLC, at 25-26 (Aug. 16, 1996).

⁸ See ICO Petition at 3.

finding that such foreign licensing practices are deficient – which would produce difficulties relating to international comity like those identified by ICO⁹ and potentially violate the most-favored nation treatment requirements of the WTO Basic Telecommunications Agreement.

II. FREQUENCY COORDINATION

ICO next seeks clarification of the relationship between the process for licensing of foreign satellites to provide services in the United States and the international frequency coordination process.¹⁰ Domestic licensing and international frequency coordination proceedings often present common issues. For this reason, the Commission should take care that its licensing processes fully take into account international frequency coordination rules and agreements -- as well as other international commitments of the United States (such as those under the WTO Basic Telecommunications Agreement). Nevertheless, explicit linkage of these domestic and international processes is not appropriate. The Commission has never delayed its U.S. licensing decisions until international coordination is completed, and it should not be required to resolve all licensing issues in the context of an international coordination. Such a policy would also subject the Commission to conflicting obligations, because it acts as a neutral regulator in U.S. licensing proceedings, but must represent the interests of U.S. satellite systems in international coordination negotiations.

⁹ See id. at 4 n.4.

¹⁰ See ICO Petition at 5-6. In particular, Motorola and Iridium do not understand the meaning of the last two sentences of the argument, beginning with "ICO requests . . ." and ending with ". . . in the processing round." Id.

III. TREATMENT OF ICO AS AN IGO AFFILIATE

ICO also contends that the Commission should decide now that ICO will not be treated as an IGO affiliate under the DISCO-II Order.¹¹ The issue of whether there is adequate separation between ICO and Inmarsat is the central issue in a separate proceeding that has been pending before the Commission for almost three years.¹² By contrast, there is simply not an adequate record in this rulemaking proceeding for the Commission to make an adjudicatory finding that ICO is no longer an IGO affiliate. ICO's arguments on this point are properly presented to the Commission in the context of the adjudicatory proceedings on the letter of intent that ICO has filed to provide service in the United States.

IV. COMPETITION TEST

Motorola and Iridium agree with ICO that the Commission should deny market access to WTO-Member satellite systems only where there is a "very high risk to competition" in the U.S. satellite market.¹³ However, ICO contends that the Commission should decide that it will find such a "very high risk to competition" **only** where (1) there is a "very high risk of harm to U.S. consumers" **and** (2) the foreign applicant may "use

¹¹ Id. at 6-7

¹² See Application of COMSAT Corporation for Authority to Participate in the Procurement of Facilities of the I-CO Global Communications Limited System, File No. 106-SAT-MISC-95.

¹³ Id. at 7-9; see Motorola/Iridium Further Comments at 6.

. . . market power to 'raise prices and limit output in the U.S. satellite market.'"¹⁴ While ICO identifies a primary situation in which it might be proper for the Commission to find a "very high risk to competition," there are other types of anticompetitive behavior that may also pose such a risk.¹⁵ The Commission should not modify the DISCO-II Order to constrain its ability to consider such conduct.

¹⁴ ICO Petition at 8.

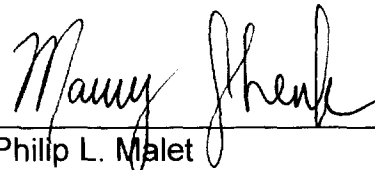
¹⁵ For example, the U.S. antitrust laws explicitly extend to foreign anticompetitive conduct that limits the opportunities of U.S. exporters of goods or services. See Foreign Trade Antitrust Improvements Act of 1982, § 402, Pub. L. 97-290, 96 Stat. 1246 (codified at 15 U.S.C. § 6a).

V. CONCLUSION

Motorola and Iridium support the Commission's implementation of the WTO Basic Telecommunications Agreement in the DISCO-II Order, and urge the Commission to consider the ICO Petition in accordance with the above comments.

Dated: February 17, 1998

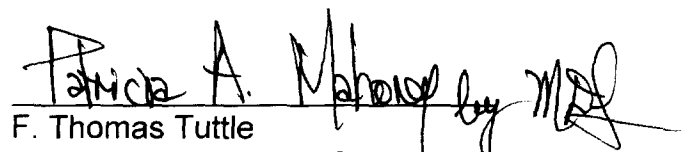
Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Christine A. Delp, hereby certify that the foregoing Comments of Motorola, Inc. and Iridium Operating LLC to Petition for Clarification and Reconsideration of ICO Global Communications was served, via first class mail, postage prepaid, this 17th day of February 1998, on the following persons:

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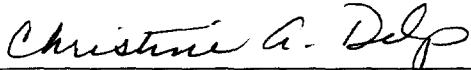
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